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WASHINGTON DC 20036

MAILED
JUN 03 2010
OFFICE OF PETITIONS

In re Patent No. 7,616,860 : DECISION ON REQUEST FOR
Glassman et al. : RECONSIDERATION OF
Issue Date: November 10, 2009 : PATENT TERM ADJUSTMENT AND
Application No. 10/815,016 : NOTICE OF INTENT TO ISSUE
Filed: March 31, 2004 : CERTIFICATE OF CORRECTION
Atty. Docket No. SONY-06700 :

This is a decision on the petition filed on December 16, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting reconsideration of the patent term adjustment calculation.

The request for reconsideration of the patent term adjustment calculation is **GRANTED to the extent indicated herein**. The term of the above-identified patent is extended or adjusted by **one thousand eighty-seven (1087) days**.

On December 16, 2009, patentee submitted a petition under 37 CFR 1.705(d) and fee. On May 6, 2010, patentee filed a Request for Recalculation of Patent Term Adjustment in View of Wyeth. On May 11, 2010, the Office mailed a decision granting the petition under 37 CFR 1.705(d) to the extent that a certificate of correction would be issued indicating that the term of the patent was extended or adjusted by 887 days. On May 18, 2010, the Office mailed a "DECISION ON REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH AND NOTICE OF INTENT TO

ISSUE CERTIFICATE OF CORRECTION" indicating that the patent term adjustment had been determined to be 1055 days.

The Office notes that the decisions of May 11, 2010 and May 18, 2010, were issued in error as they accorded patentee less days of patent term adjustment than were warranted. Accordingly, the decisions of May 11, 2010 and May 18, 2010, are withdrawn. The present decision supersedes the decisions mailed on May 11, 2010 and May 18, 2010.

Patentee acknowledges 955 days of delay under 37 CFR 1.702(b), 34 days of applicant delay, and a period of overlap between A delay and B delay. However, patentee incorrectly calculated A delay, B delay and the overlapping period.

As to A delay, it is noted that the Office was incorrectly assessed a period of delay of 43 days, pursuant to 37 CFR 1.702(a)(2), for failure to respond to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken.

The phrase the date on which "an appeal was taken" in 35 U.S.C. 154(b)(i)(A)(ii) means the date on which an appeal brief (and not a notice of appeal) was filed. The phrase "appeal brief in compliance with 37 CFR 1.192" requires that: (i) the appeal brief fee (37 CFR 1.17(c)) be paid (37 CFR 1.192(a)); and (2) the appeal brief complies with 37 CFR 1.192(c)(i) through (c)(9). Accordingly, 37 CFR 1.703(a)(4) pertains to the provisions of 35 U.S.C. 154(b)(i)(A)(ii) and specifies that the period of adjustment for Office delay includes the number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 1.192 was filed and ending on the date of mailing of any of an examiner's answer under § 1.193, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

In this instance, an appeal brief was filed on November 18, 2008. On December 10, 2008, a notification of non-compliant appeal brief was mailed. On December 15, 2008, a corrected appeal brief was filed. On April 30, 2009, a notice of allowance was mailed 4 months and 15 days after the date the

appeal brief in compliance with 37 CFR 1.192 was filed. Thus, a period of adjustment for Office delay pursuant to 37 CFR 1.703(a)(4) of 15 days (not 43 days) is warranted. Accordingly, A delay is 528 days (427 + 86 + 15).

As to B delay, 37 CFR 1.703(b) indicates that the period of adjustment under 37 CFR 1.702(b) ("over three year period") is the number of days, if any, in the period beginning on the day after the date that is three years after the actual filing date of the application and ending on the date a patent was issued. 35 U.S.C. 154(b)(1)(B). However, 37 CFR 1.703(b) also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Specifically, 37 CFR 1.703(b)(4)¹ provides that the period of adjustment of the term of a patent shall not include the period equal to the sum of the period of pendency consumed by appellate review under 35 U.S.C. 134, 141, 145, whether successful or unsuccessful (35 U.S.C. 154(b)(1)(B)(ii)).

The Office agrees with patentee that the "over three year period" is 955 days. However, patentee failed to account for the filing of the notices of appeal on July 12, 2007, and October 21, 2008. The Office reminds patentee that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the total period consumed by appellate review is 347 days (155 days beginning on the date on which the first notice of appeal was filed, July 12, 2007, and ending on the date of the mailing of the non-final Office action, December 13, 2007, plus 192 days beginning on the date on which the second notice of appeal was filed, October 21, 2008, and ending on the date of the mailing of the notice of allowance, April 30, 2009). Thus, B delay is 608 days (955 - 347). Furthermore, the overlapping period between A delay and B delay is 15 days (not 129 days).

¹ The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, **whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.** 37 CFR 1.703(b) (emphasis added).

Accordingly, the Office has determined that the patent term adjustment for the above identified patent is 1087 days (528 days of A delay + 608 days of B delay - 15 days of overlap - 34 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges the previous submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fee is due.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand eighty-seven (1087) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction and Copy of Revised PAIR screen

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT: 7,616,860 B2
DATED: Nov. 10, 2009
INVENTOR(S): Glassman et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 921 days

Delete the phrase "by 921 days" and insert – by 1087 days--

Day : Wednesday

PALM INTRANET

Date: 6/2/2010

Time: 08:50:36

PTA Calculations for Application: 10/815016

Application Filing Date:	03/31/2004	PTO Delay (PTO):	1123
Issue Date of Patent:	11/10/2009	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	34
Post-Issue Petitions:	0	Total PTA (days):	1087
PTO Delay Adjustment:	-2		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
88	06/02/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	32		
85	05/13/2010	PETITION DECISION - GRANTED			
84	05/06/2010	PETITION ENTERED			
83	05/11/2010	MAIL-RECORD A PETITION DECISION OF GRANTED FOR PATENT TERM ADJUSTMENT AFTER ISSUE			
82	05/11/2010	RECORD A PETITION DECISION OF GRANTED FOR PATENT TERM ADJUSTMENT AFTER ISSUE			
82	05/11/2010	RECORD A PETITION DECISION OF GRANTED FOR PATENT TERM ADJUSTMENT AFTER ISSUE			
81	05/10/2010	ADJUSTMENT OF PTA CALCULATION BY PTO			
81	05/10/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		34	
80	12/16/2009	PETITION ENTERED			
79	11/10/2009	RECORDATION OF PATENT GRANT MAILED			
78	10/21/2009	ISSUE NOTIFICATION MAILED			
77.5	11/10/2009	PTA 36 MONTHS	610		
77	11/10/2009	PATENT ISSUE DATE USED IN PTA CALCULATION			
76	10/15/2009	EXPORT TO FINAL DATA CAPTURE			
75	10/14/2009	DISPATCH TO FDC			
74	10/08/2009	MAIL-PETITION DECISION - DISMISSED			
73	10/08/2009	PETITION DECISION - DISMISSED			
72	07/29/2009	RESPONSE TO REASONS FOR ALLOWANCE			
71	08/04/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
70	07/29/2009	ISSUE FEE PAYMENT VERIFIED			
69	07/29/2009	ISSUE FEE PAYMENT RECEIVED			
68	07/10/2009	PETITION ENTERED			

67	06/04/2009	FINISHED INITIAL DATA CAPTURE			
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65	04/30/2009	MAIL NOTICE OF ALLOWANCE			53
64	04/28/2009	ISSUE REVISION COMPLETED			
63	04/28/2009	DOCUMENT VERIFICATION			
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60	01/29/2009	APPEAL BRIEF REVIEW COMPLETE			
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58	12/15/2008	APPEAL BRIEF FILED			
57	12/17/2008	REQUEST FOR REFUND			
56	12/10/2008	NOTICE -- DEFECTIVE APPEAL BRIEF			
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53.1	11/18/2008	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
53	11/18/2008	APPEAL BRIEF FILED			
52	10/21/2008	NOTICE OF APPEAL FILED		21	45
51	10/21/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
50	10/02/2008	MAIL ADVISORY ACTION (PTOL - 303)			
49	09/29/2008	ADVISORY ACTION (PTOL-303)			
47	09/05/2008	DATE FORWARDED TO EXAMINER			
46	08/29/2008	AMENDMENT AFTER FINAL REJECTION			
45	06/30/2008	MAIL FINAL REJECTION (PTOL - 326)			
44	06/23/2008	FINAL REJECTION			
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40	12/10/2007	NON-FINAL REJECTION			
39	09/25/2007	DATE FORWARDED TO EXAMINER			
38	09/25/2007	MAIL APPEALS CONF. REOPEN PROSEC.			
37	09/18/2007	PRE-APPEALS CONFERENCE DECISION - REOPEN PROSECUTION			
36	07/12/2007	REQUEST FOR PRE-APPEAL CONFERENCE FILED			
35	07/12/2007	NOTICE OF APPEAL FILED			
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34	07/12/2007				
33	06/11/2007	MAIL ADVISORY ACTION (PTOL - 303)			
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30	05/18/2007	AMENDMENT AFTER FINAL REJECTION		6	28
29	05/18/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
28	02/12/2007	MAIL FINAL REJECTION (PTOL - 326)			
27	02/05/2007	FINAL REJECTION			
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23	08/01/2006	MAIL NON-FINAL REJECTION	427		-1
22	07/24/2006	NON-FINAL REJECTION			
21	02/01/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
20	07/11/2006	CASE DOCKETED TO EXAMINER IN GAU			
19	03/14/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
18	02/01/2005	REFERENCE CAPTURE ON IDS			
17.7	02/01/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	02/01/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	06/08/2005	CORRESPONDENCE ADDRESS CHANGE			
15	06/08/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
14	09/08/2004	APPLICATION RETURN FROM OIPE			
13	09/08/2004	APPLICATION RETURN TO OIPE			
12	09/02/2004	APPLICATION DISPATCHED FROM OIPE			
11	09/02/2004	APPLICATION IS NOW COMPLETE			
10	08/09/2004	ADDITIONAL APPLICATION FILING FEES			
9	08/09/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
8	08/09/2004	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
7	06/14/2004	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			

5	05/07/2004	CLEARED BY L&R (LARS)			
4	04/30/2004	REFERRED TO LEVEL 2 (LARS) BY OIPE CSR			
3	04/30/2004	CASE CLASSIFIED BY OIPE			
2	04/08/2004	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	03/31/2004	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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